

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and Section 1598, *Motor Vehicle and Aircraft Fuels*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and 1598, *Motor Vehicle and Aircraft Fuels*. The amendments to Regulation 1598 reflect the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8, effective July 1, 2011; incorporate the two exemptions from the additional 1.75 percent tax on diesel fuel provided by RTC section 6357.3; and prescribe the content of exemption certificate that must be used in conjunction with sales and purchases of diesel fuel that are exempt under RTC section 6357.3. The amendments to Regulation 1533.2 clarify that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

PUBLIC HEARING

A public hearing on the adoption of the proposed regulatory action will be held in Room 121, 450 N Street, Sacramento, at 10:00 a.m., or as soon thereafter as the matter may be heard, on May 24, 2011. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 1533.2 and 1598.

AUTHORITY

RTC section 7051.

REFERENCES

Regulation 1533.2: RTC section 6357.1.

Regulation 1598: RTC sections 6011, 6012, 6051.8, 6201.8, 6245.5, 6357, 6357.3, 6357.5, 6357.7, and 6423.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Assembly Bill No. (AB) X8 6 (Stats. 2010, ch. 11) added sections 6051.8 and 6201.8 to the RTC to impose an additional 1.75 percent Sales and Use Tax on diesel fuel and amended RTC section 60050 to lower the Diesel Fuel Tax rate, beginning July 1, 2011. The additional Sales and Use Tax is specific to the sale and use of diesel fuel and is in addition to the sales taxes imposed under RTC sections 6051, 6051.2, 6051.3, and 6051.5, and the use taxes imposed under RTC sections 6201, 6201.2, 6201.3, and 6201.5.

Senate Bill No. (SB) 70 (Stats. 2010, ch. 9) was a companion bill to AB X8 6. As relevant here, SB 70 added section 6357.3 to the RTC to provide an exemption from the additional 1.75 percent Sales and Use Tax on diesel fuel for:

- Diesel fuel that is purchased for use or used in a manner that is exempt under the Diesel Fuel Tax Law and not subject to the backup tax imposed by RTC section 60058 or the payment requirement imposed by RTC section 60108 of the Diesel Fuel Tax Law (RTC § 60001 et seq.); and
- Diesel fuel that is subject to the payment requirement for qualifying exempt bus operators specified in RTC section 60502.2.

However, RTC section 6357.3, subdivision (b), provides that “[n]o exemption shall be allowed unless the purchaser furnishes the seller with an exemption certificate, completed in accordance with instructions or regulations as the Board may prescribe.”

Further, RTC sections 6051.7 and 6201.7, which imposed an additional one percent Sales and Use Tax on the sale and purchase of tangible personal property effective April 1, 2009, will cease to be operative on July 1, 2011, based upon their own terms.

Furthermore, RTC section 6357.1 provides a partial exemption for diesel fuel used in farming activities or food processing. The partial exemption applies to all of the taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.), except the taxes imposed under RTC sections 6051.2 and 6201.2, and taxes imposed under section 35 of article XIII of the California Constitution. And, the partial exemption provided by RTC section 6357.1 will apply to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8, effective July 1, 2011, and will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

Proposed Amendments

The proposed amendments to Regulation 1598 reflect the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8 and the expiration of the additional one percent Sales and Use Tax imposed by RTC sections 6051.7 and 6201.7, effective July 1, 2011; incorporate the two exemptions from the

additional 1.75 percent Sales and Use Tax on diesel fuel provided by RTC section 6357.3; and prescribe the content of exemption certificate that must be used in conjunction with sales and purchases of diesel fuel that are exempt under RTC section 6357.3. The amendments to Regulation 1533.2 clarify that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

The objective of the proposed amendments is to revise the text of Regulation 1533.2 to reflect that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011. The objective of the proposed amendments is also to revise the text of Regulation 1598 to reflect the provisions of RTC sections 6051.8, 6201.8, and 6357.3 that will be effective July 1, 2011 and to prescribe the content of the exemption certificate required by RTC section 6357.3.

There are no comparable federal regulations or statutes to Regulations 1533.2 and 1598.

Proposition 26

On November 2, 2010, California voters passed Proposition 26. Proposition 26 requires that certain state and local fees be approved by a two-thirds vote of both houses of the Legislature. Proposition 26 also voids any conflicting law adopted between January 1, 2010, and November 3, 2010, twelve months after the date the proposition was approved, unless the conflicting law is reenacted in conformance with the proposition's two-thirds vote requirement.

The provisions of AB X8 6, which were enacted in March of 2010, may be affected by Proposition 26; however, the Legislature has until November 2011 to reenact any nonconforming provisions of AB X8 6 in compliance with the provisions of Proposition 26. Therefore, the impact of Proposition 26 on AB X8 6 is uncertain and the Board is proposing to adopt the current amendments to reflect the provisions of current law.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1533.2 and 1598 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1533.2 and 1598 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of the proposed amendments to Regulations 1533.2 and 1598 will merely revise the text of the regulations so that they conform to the relevant provisions of the RTC that will be effective on July 1, 2011, and prescribe the content of the exemption certificate required by RTC section 6357.3. The proposed amendments will not impose any new taxes, provide any new exemptions, or require taxpayers to comply with any procedures that are not already required by the RTC. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulations 1533.2 and 1598 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 1533.2 and 1598 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the adoption of the proposed amendments to Regulations 1533.2 and 1598 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Regulations 1533.2 and 1598 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel III (Specialist), by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends when the public hearing begins at 10:00 a.m., or as soon thereafter as the matter may be heard, on May 24, 2011. If the Board receives written comments prior to the close of the written comment period, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed amendments to Regulations 1533.2 and 1598. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared underscored and strikeout versions of the text of Regulations 1533.2 and 1598 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments. These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the Initial Statement of Reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 1533.2 and 1598 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 1533.2 and 1598 the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.